

1 Jeffery Harris
2 16 Yuma Trail
3 Bisbee, AZ 85603
4 (520) 432-2757

5 *Petitioner-Plaintiff in Pro Per*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF COCHISE**

8 **JEFFERY HARRIS,**)
9 Petitioner-Plaintiff,) Case No.: CV 2019 00052
10 vs.)
11 **THE CITY OF BISBEE, ARIZONA;**)
12 **MAYOR, DAVID M. SMITH; and**)
13 **MEMBERS OF COUNCIL, ANNA**)
14 **CLINE, JONI GIACOMINO, JOAN**)
15 **HANSEN, BILL HIGGINS, LESLIE**)
16 **JOHNS, and GABE LINDSTROM;**)
17 Respondents-Defendants.)
18)
19)
20)
21)
22)
23)
24)
25)
 REPLY IN SUPPORT OF MOTION TO
 STRIKE NOTICE OF APPEARANCE OF
 RESPONDENTS' PURPORTED LEGAL
 COUNSEL and MOTION TO STRIKE
 PURPORTED RESPONDENTS' MOTION
 TO DISMISS
)
)
 Assigned to: the Hon. Laura Cardinal
)

15 Marshall Humphrey, III, Esq., has responded to Petitioner Harris' Motion to Strike
16 Notice of Appearance of Respondents' Purported Legal Counsel and Motion to Strike Purported
17 Respondents' Motion to Dismiss, presenting a straw man argument in the first instance, and—
18 absent a citation to relevant authority that might somehow support his position—misrepresenting
19 applicable law in the second. Both of these arguments in opposition fail, and both Harris'
20 Motions to Strike should be granted.

21 **I. EVEN IF MARSHALL HUMPHREY IS ON RETAINER WITH THE CITY OF**
22 **BISBEE, HE HAS NOT BEEN LAWFULLY AUTHORIZED TO REPRESENT**
23 **THE CITY IN THE INSTANT MATTER**

24 Mr. Humphrey's argument in opposition to Harris' Motion to Strike Mr. Humphrey's
25 Notice of Appearance is a straw man that fails entirely to meet the actual argument presented by

Harris in his Motion to Strike. In his Motion, Harris has contended that Humphrey lacks the
1 standing to appear in the *instant matter* precisely because he has neither been authorized to
2 represent the City of Bisbee in the instant matter *in a manner consistent with Arizona law* nor has
3 he filed an application with this Court for leave to intervene. In contrast, Humphrey's contention
4 is that, because he and his firm have been retained by the City of Bisbee through a public vote of
5 the City Council to provide (alternative) legal services, this "authorization" to provide legal services,
6 *generally*, somehow also provides Humphrey with what he purports to be "authorization" (obtained through a public vote) to represent the City and its Council in this
7 *specific* instance.

While it may be convenient for Mr. Humphrey to conflate "authorization" to provide legal services *generally* and *specific* "authorization" to represent to the City and its Council in the instant matter, conflation of this sort is inconsistent with Arizona law. As Harris argued in his Motion to Strike, A.R.S. § 38-431.03(D) explicitly requires that "A public vote shall be taken before **any** legal action binds the public body." (Emphasis added.) Therefore, pursuant to § 38-431.03(D), even an attorney retained by a public body must first obtain *specific* authorization through a public vote of that body to proceed before he binds that body in a specific suit to which that public body is a party. And, precisely because the City has failed to authorize any one to represent it in the instant matter through a public vote, neither Mr. Humphrey nor any other attorney has been authorized to represent the City of Bisbee and its Council as Respondents in the instant matter in a manner that is consistent with Arizona law. Therefore, Mr. Humphrey has no standing in this matter, and the Notice of Appearance that he filed on February 27, 2019, as well as any unauthorized pleadings or other papers filed in this matter, should be stricken.

1 **II. THE QUESTION OF ADMINISTRATIVE STANDING IS NOT RIPE FOR**
2 **ADJUDICATION BY THIS COURT**

3 Mr. Humphrey's two-pronged response in opposition on Harris' Motion to Strike
4 purported Respondents' Motion to Dismiss fails to meaningfully rebut Harris' contention that the
5 question of administrative standing is not ripe for adjudication by this Court. Neither of the
6 arguments put forth by Mr. Humphrey in his Response properly addresses an issue that might
7 somehow defeat Harris' Motion to Strike (purported Respondents' Motion to Dismiss).

8 Mr. Humphrey has entirely misplaced his reliance on *Karbal v. Dep't of Revenue*¹ to
9 attempt to rebut Harris' contention that the question of administrative standing is not ripe for
10 adjudication by this Court in the instant special action. Despite Mr. Humphrey's assertion that
11 *Karbal* and the instant special action are somehow analogous, these two cases can be readily
12 distinguished. Harris brought the instant action—within the narrow confines of the Rules of
13 Procedure for Special Actions—to resolve the single question as to whether the Respondent City
14 has failed to perform a duty required by law as to which it had no discretion. In sharp contrast,
15 the Court of Appeals, in *Karbal*, addressed the question as to whether Karbal had standing to
16 bring a suit in tax court on behalf of another taxpayer. The Court of Appeals held that "Karbal
17 lacks legal standing to bring this suit because he is not the actual taxpayer" without addressing
18 the issue of exhaustion of administrative remedies (also raised by Karbal). *Id.* at 117, ¶ 11; at n.
19 4. In *Karbal*, the appellant specifically raised the issue of standing in an attempt to overturn an
20 adverse ruling by the tax court; whereas, in the instant special action, Petitioner Harris has made
21 no attempt to overturn an administrative ruling (that the City Council failed to render) nor has he
22 asked this Court to adjudicate the issue of administrative standing. Plainly, there is little, if
23 anything, analogous between a *special action* brought to resolve the sole issue of whether a
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25 ¹ 215 Ariz. 114 (App. 2007)

1 public body has failed to perform a duty required by law and an *appeal* taken from the tax
2 court's denial of a suit brought by someone who lacked standing because he was not the actual
3 taxpayer. Precisely because the issue of administrative standing cannot be properly raised in
4 instant speacial action, Harris simply seeks a ruling by this Court that would afford him the
5 opportunity to exhaust his administrative remedies that he was denied below in utter disregard of
6 applicable law.

7 In the second portion of his two-pronged response in opposition to Harris' Motion to
8 Strike (purported Respondents' Motion to Dismiss), Mr. Humphrey has shifted from relying on
9 case law that is not analogous to creatively misinterpreting applicable law. Entirely absent a
10 citation to relevant authority that might somehow support his conclusory assertion, Mr.
11 Humphrey has misleadingly asserted that “[a] final decision has been reached in Mr. Harris'
12 administrative action” and that the administrative decision rendered by the Bisbee City Manager
13 (at that time) “is final in the sense that it forecloses further action by the City with respect to Mr.
14 Harris’ claim.” The convenient notion that a final decision has somehow been reached in Harris'
15 administrative claim (or that Harris’ right to an administrative appeal was somehow foreclosed)
16 can be readily refuted, however, by merely examining the law governing protests against
17 contracts awarded by the City of Bisbee. Nowhere in the Bisbee City Code section governing
18 such protests, § 3.5.20, is there any provision that would somehow authorize a city manager to
19 render a final decision in a protest brought in accordance with this section. To the contrary,
20 Bisbee City Code § 3.5.20(D)(1) provides that the City Manager, upon rendering his decision
21 under this section, “*shall* include a statement of the decision with supporting rationale and a
22 notice of *the right to appeal* set forth in [City Code § 3.5.20,] Section E below.” (Emphasis
23
24
25

1 added.) In turn, City Code § 3.5.20(E)(3) requires the City Council to hear timely an appeal
2 taken from a City Manager's decision,² as is evidenced by its unequivocal language:

3 The City Council *shall* hear and consider the appeal within two (2) regular
4 meetings. The protester and the City Manager *shall* be given a reasonable
opportunity to be heard in the matter.

5
6 (Emphasis added.) Moreover, the following language of City Code § 3.5.20(E)(5), in and of
7 itself, thoroughly defeats Mr. Humphrey's spurious contention that a City Manager allegedly has
8 the authority to render an administrative decision that is somehow final:

9 The decision of the City Council is the final administrative action.
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11 Therefore, in that Mr. Humphrey's Response fails to meaningfully rebut Harris'
12 argument that the Motion to Dismiss is devoid of argument material to the instant Special
13 Action, the purported Respondents' Motion to Dismiss should be stricken.

14 DATED this 29th day of April, 2019.

/s/Jeffery Harris
Jeffery Harris

16 Original of the foregoing transmitted electronically on this
17 29th day of April, 2019 to:

18 Clerk of the Court
Cochise County Superior Court
19 100 Quality Hill
Bisbee, Arizona 85603
20

21 By mutual agreement, copy of the foregoing was
22 electronically transmitted on this same day to:
23

24 Marshall Humphrey, III, Esq.
mhumphrey@humphreyandpetersen.com

25 ² Remarkable, perhaps, City Code § 3.5.20(D)(4) states that: "If the City Manager fails to issue a decision within the time limits set forth in subsection (1) or (3), the protester may proceed as if the City Manager had issued an adverse decision."